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Supreme Court, U.S.
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No. 05-419

In The

Supreme Court of the United States

MARY ELLEN CHAJKOWSKI *Pro se*
Petitioner/alternate payee

v.

JOSEPH J. BOSICK, *et al.*,
Respondent/self-employed participant and trustee,
Law firm employer plan and plan trustees,
Pennsylvania judges.

On Petition for *Writ of Certiorari*
To the United States Court of Appeals for the Third Circuit

Petition for *Writ of Certiorari*

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QUESTIONS PRESENTED

I.

Whether *sua sponte* dismissal here is *bias* or error, where undisputed allegations are: 1) fiduciary respondents violated provisions of the divorce code/ civil rules/ child support/ ERISA/ tax code statutes and the *Bifurcation* Order, which 2) judicial respondents failed to enforce, 3) at a loss to Petitioner/*alternate payee* and profit to *plan* respondents; a ruling contrary to limitations of the *Rooker-Feldman* doctrine set forth by this court in Exxon[1]; and inconsistent application of the doctrine in Parkview[2]; and Moore[3]?

II.

Whether district courts have jurisdiction to hear a suit to enforce ERISA component of a divorce action where trial court issued a *decree* and *bifurcation* order, reserving jurisdiction over Petitioner/*alternate payee*'s rights under ERISA, which the state and lower courts failed to enforce?

III.

Whether the lower courts inequitably violated due process rights of Petitioner/ *alternate payee*, when the courts:

a) Failed to enforce litigant disclosures and orders;
b) *Sua sponte* dismissed the claim with prejudice;
c) Failed to consider undisputed state court errors;
d) Failed to entertain an appeal of Petitioner's claim.

IV.

Whether undisputed judicial failure to enforce violations of 1) civil rules/ divorce code/ child support/ ERISA/ tax code statutes and 2) *Bifurcation* Order, a 14th Amendment violation, warrant sanctions?

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[1] Exxon Mobil. v. Saudi Basic , 125 S. Ct. 1517, 1521-22 (2005).
[2] Parkview v. City of Lebanon, D.C. No. 98 cv 455 (3dCir. 2000).
[3] United States of America v. Moore, No. 03-2698 M.D. (3d Cir. 2004).

PARTIES

Suit to enforce ERISA component of divorce action.

MARY ELLEN CHAJKOWSKI *Pro se,*
Petitioner/alternate payee,

v.

JOSEPH J. BOSICK, *et al,*
Respondent/Self-employed plan participant,
Law firm plan trustee;
PIETRAGALLO, BOSICK AND GORDON SALARY REDUCTION PROFIT SHARING PLAN, *Respondents/ Employer plan,*
WILLIAM A. PIETRAGALLO, JR., ESQUIRE,
JOSEPH J. BOSICK, ESQUIRE,
MARK GORDON, ESQUIRE,
Respondents/ Employer plan trustees;
MAX BAER,
KIM D. EATON,
P.J. E. CIRILLO,
PATRICK R. TAMILIA,
KATE FORD ELLIOTT,
CORREALE F. STEVENS,
JOAN ORIE MELVIN,
JAMES R. CAVANAUGH,
Respondents/Pennsylvania judges.

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United States v. Moore, No. 03-2698, Middle District (3d Cir. 2004).....14, 16, 23, 25

Statutes

U.S. Const. Amend XI.....25

U.S. Const. Amend. XIV.....*passim*

28 U.S.C. § 1254.....2

28 U.S.C. § 2201.....16

Employee Retirement Income Security Act (ERISA), 29 U.S.C.A. § 1001 et seq. (2005).....*passim*

CITATION TO OPINIONS/ORDERS BELOW

04-cv-1582

District Court, *sua sponte* dismiss, October 20, 2004.
District Court, denied Reconsideration, Nov. 2, 2004.

04-4449

Court of Appeals, Judicial Respondents' motion to be excused from filing a brief granted, March 3, 2005.
Court of Appeals, affirmed dismissal, June 6, 2005.
JUDGMENT TO BE REVIEWED, Court of Appeals, *sua sponte* denied Rehearing *en banc,* July 5, 2005.

Pennsylvania Orders -FD 97-009496-006
Bifurcation/ Stipulation/ QDRO

Pa. Com. Pl., Pretrial Order, November 1, 2000.
Pa. Com. Pl., *Bifurcation* Order, December 26, 2000.
Pa. Com. Pl., Decree in Divorce, December 29, 2000.
Pa. Com. Pl., Counsel Stipulation, April 4, 2001.
Pa. Com. Pl., trial court QDRO, qualified by the *plan*, 2001 evidence/ 2002 ED, February 25, 2003.

Respondents' 401k Exclusions from Child Support

Pa. Com. Pl., APL/child support, March 18, 1998.
Pa. Com. Pl., APL/child support, December 30, 1998.
Pa. Com. Pl., $49,935 support arrears, Jan. 4, 1999.
Pa. Superior Ct., 759 WDA and 819 WDA 1999, Opinion and Order, August 4, 2000.
Pa. Supreme Ct., Nos. 666 & 667 WAL 2000, denied Petition for *Allocatur,* April 2, 2001.
Pa. Com. Pl., Hearing Officer, $100,519.53 overpayment APL/child support, November 30, 2004.

Equitable Distribution *Plan* Assets

Pa. Com. Pl., Seal the Record, April 9, 2002.
Pa. Com. Pl., Equitable Distribution, April 10, 2002.
Pa. Superior Ct,1522/ 1544 WDA 2002 (02/12/04).
Pa. Superior Ct., 1522/1544 WDA 2002, denied Petition to Supplement, June 20, 2003.
Pa. Supreme Court, Nos. 172/ 173 WAL 2004, denied Petition for *Allocatur*, July 21, 2004

JURISDICTIONAL STATEMENT

Order Below

Chajkowski v. Bosick, Dkt. No. 04-4449 (3d Cir.) Order entered July 5, 2005, denying *en banc* rehearing. (Unreported).

Statutes Conferring Jurisdiction

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. ... 28 U.S.C. § 1254 (1988).

Supreme Court Rule 10:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

...

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const. Amend. XI Sovereign Immunity: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

U.S. Const. Amend. XIV, §1 ". . . .nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

Employee Retirement Income Securities Act, U.S.C.A. § 1001 *et seq*. (text provided in full in Appendix II).

IRS Code 401k (text provided in full in Appendix II)

Pennsylvania Divorce Code (Text provided in Appendix II)

ERISA Section Five Enforcement Powers (text provided in Appendix II.)

Pennsylvania Child Support Statute (text provided in full in Appendix II).

STATEMENT OF THE CASE

Petitioner/*alternate payee's Pro se* suit to enforce the ERISA component of a divorce action was *sua sponte* dismissed with prejudice by the district court, affirmed by the court of appeals, and hereby appealed.

Plan assets at issue include insurance, securities, trusts, real estate and corporate interests, all subject to statutory disclosure requirements. Exercising a statutory right to *plan* disclosures is a compliance issue not limited to divorce; it was a required response in this divorce litigation.

Respondent(s)/*Self-employed plan participant-trustee, law firm plans, and plan trustees* represent themselves, as counsel of record is a law partner.

The lower federal courts required no litigant disclosures to screen conflicts. The appeal court issued a briefing order that it inequitably enforced.

Respondents/*Pennsylvania judges'* moved to be excused from filing a brief. Motion was granted by order issued several days after judicial brief was due.

Respondents/ *Self-employed plan participant, Law firm plans and plan trustees'* procedurally 'flawed' and untimely filing of an appellate brief was not construed against them.

Petitioner/*alternate payee's* timely Reply Brief, *citing* Exxon Mobile v. Saudi Basic, 125 S.Ct. 1517, 1521-22 (2005), in opposing *Rooker-Feldman* defenses was erroneously docketed 'untimely' when docketed by court order effective months after Reply arrived, just before panel issued an adverse order.

The court acknowledged that its *sua sponte* dismissal with prejudice was inconsistent with the liberality with which federal courts construe *Pro se* Complaints, permitting amendment not dismissal.

Lower courts failed to exercise jurisdiction to hear undisputed allegations that fiduciary and judicial respondents

violated provisions of child support and internal revenue statutes, by failing to comply with or to enforce ERISA disclosures in a state divorce action, at a loss to Petitioner/*alternate payee*- profit to Respondent/*self-employed participant-plan trustee.*

The appeal court rested on the district court's unsupported conclusion: "the factual allegations in Chajkowski's complaint amounted to nothing more than a collateral attack on the state court judgments rendered in connection with her divorce proceedings, and that application of the *Rooker-Feldman* Doctrine was required." The lower courts required no response to the complaint and no Exxon limitations were considered or applied to factual allegations. The appeal court did no plenary review of the record.

Petitioner/*alternate payee's Pro se* Complaint and Reply Brief, *citing* Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S.Ct. 1517; 161 L.Ed. 2d 454 (2005) are substantively the components of "express belief and conflicting federal precedent," needed to satisfy LAR 35.1 requirements. No LAR 35.1 compliance request was made to *Pro se* Petitioner.

Respondents/*Pennsylvania judges* received an order to be excused after the due date for filing a response brief. Respondents/ *Self-employed ERISA plan participant, Law firm plans and plan trustees* received a follow-up letter 12/17/04, a telephone request for brief 03/05/05, and the untimely hard copies were docketed 03/17/05. None of which was construed adverse to the Respondents.

The Petition for *en banc* Rehearing was denied *sua sponte* by the Appeal Court, and published referring to LAR 34.1(a), in *bias* or procedural error.